

Applicant : William J.B. Brown
Appl. No. : 10/725,647
Page No. : 6

REMARKS

Applicant respectfully requests reconsideration of the above-identified patent application. Claims 1-12 are pending; and claims 1, 2, 8, 9, 11 and 12 are amended. Applicant respectfully traverses the rejections as conceivably applied to the amended claims.

I. Interview

Applicant thanks Examiner Patterson for the courtesies extended to Applicant's attorney during the personal interview conducted on September 8, 2005. In the interview, independent claims 1 and 8 were discussed in view of U.S. Patents 1,785,410 to Gilkerson, 2,272,373 to Jayne, 5,845,420 to Buccianti et al, and 6,000,148 to Cretinon. Applicant's attorney presented amendments to claims 1 and 8 which focused on a welt that is fully exposed and visible in the forefoot region of the completed footwear or heel cradle that extends upwardly along a portion of the upper. These amendments are formally presented in this Response. Although no agreement was reached during the interview, the Examiner stated that these amendments appear to overcome Jayne in combination with the other references. Applicant respectfully submits that the Examiner will find all claims in condition for allowance upon full reconsideration.

II. Allowable Subject Matter

Applicant thanks Examiner Patterson for the statement that claims 2, 3 and 7 would be allowable if rewritten in independent form. Claims 2 is rewritten in independent form. Applicant submits that claims 2, 3 and 7 are fully allowable.

Applicant : William J.B. Brown
Appl. No. : 10/725,647
Page No. : 7

III. Non-Art Rejections

As originally presented, claims 5 and 8-12 were rejected under 35 U.S.C. §112, Second Paragraph. With respect to claims 5, 8 and 10, it is asserted that the phrase “substantially only in at least one of...” and/or “substantially only at least one of...” is confusing, vague and indefinite. Applicant respectfully traverses this rejection. The fact that claim language may not be precise does not automatically render a claim indefinite; acceptability of claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification. MPEP §2173.05(b). Applicant submits that this phrase is not vague or indefinite because it clearly refers to the fact that: 1) certain features of the present invention may be located only in one or more regions or portions of the footwear; and 2) the feature must be substantially located in the at least one region. In addition, each use of this phrase is defined in the Specification to make the claims even more understandable to one of skill in the art. For example, claim 5 recites that “said welt is stitched to said peripheral allowance substantially only in at least one of said forefoot region and said arch region.” This recitation is more clearly defined on page 4, line 23, through page 5, line 4, which state that the welt is stitched to the peripheral allowance in the forefoot region, and that optionally, the peripheral allowance may extend a selected amount into the arch region and the heel region as desired.

V. Art Rejections

A. Obviousness Rejection Based on Jayne in View of Gilkerson

As originally presented, claims 1, 5 and 6 were rejected under 35 U.S.C. §103 as

Applicant : William J.B. Brown

Appl. No. : 10/725,647

Page No. : 8

being unpatentable over U.S. Patent 2,272,373 to Jayne in view of U.S. Patent 1,785,410 to Gilkerson.

Jayne discloses a platform shoe that includes a welt 31, and an apron 30 attached to the welt. Jayne emphasizes that the apron serves two primary purposes. First, the rear surface of the apron is adhered over the upper edge of the platform outsole to enhance the attachment of the upper to the outsole. Page 2, lines 40-49. Second, the apron necessarily *hides the welt* and midsole from view to provide a “finished” look. Page 2, lines 55-60.

Gilkerson discloses a shoe with a cushioned sole. The shoe includes a piece of soft cushioning material 18' that extends into the heel portion 19. The cushioning material is surrounded by a frame 29 of leather or other suitable stiff material in the heel region. The frame is flat, and is secured to the heel seat by a series of nails.

With respect to amended independent claim 1, Jayne and Gilkerson, alone or in combination, fail to disclose, teach or suggest a welt that terminates short of the heel portion and is fully exposed and visible in the forefoot portion of the completed footwear construction. In stark contrast, Jayne teaches folding an apron down over the welt to necessarily *conceal* the welt and finish off the shoe. In addition, neither Jayne nor Gilkerson disclose, teach or suggest a heel cradle that extends upwardly along at least a portion of the upper. It is asserted that Gilkerson teaches the heel cradle of the present invention; however, Gilkerson teaches only a flat frame that extends around the heel. The frame does not extend upwardly along the side of the upper to cradle the heel of the wearer's foot. Further, Applicant submits any combination of the frame of Gilkerson and the

Applicant : William J.B. Brown
Appl. No. : 10/725,647
Page No. : 9

platform sole of Jayne would be unsafe, as the frame would add instability if placed on top of the already elevated platform sole of Jayne.

Accordingly, Applicant submits that the rejection of claim 1 under §103 is unfounded and/or overcome, and therefore should be withdrawn.

B. Obviousness Rejection Based on Jayne and Gilkerson in View of Cretinon or Buccianti

As originally filed, claim 4 was rejected under 35 U.S.C. §103 as being unpatentable over Jayne and Gilkerson, and further in view of either U.S. Patent 6,000,148 to Cretinon or U.S. Patent 5,845,420 to Buccianti.

Cretinon and Buccianti are cited for disclosing a flange extending upwardly from the outsole. Applicant submits that neither Cretinon nor Buccianti supplement the above noted inadequacies of Jayne and Gilkerson with respect to independent claim 1, from which claim 4 depends. In particular, Cretinon and Buccianti fail to disclose, teach or suggest: (1) a welt construction, wherein the welt is fully exposed and visible in the forefoot portion of the footwear construction; or (2) a heel cradle that extends upwardly along at least a portion of the upper.

Accordingly, Applicant therefore submits that the rejection of claim 4 under §103 is unfounded and/or overcome, and therefore should be withdrawn.

C. Obviousness Rejection Based on Jayne in View of Cretinon or Buccianti

As originally filed, claim 8 was rejected under 35 U.S.C. 103 as being unpatentable over Jayne in view of Cretinon or Buccianti.

As discussed above, Jayne disclose a platform shoe with a welt construction. Jayne

Applicant : William J.B. Brown
Appl. No. : 10/725,647
Page No. : 10

teaches concealing the welt with an apron in order to give the platform shoe a finished look. Cretinon and Buccianti disclose athletic shoes that include flanges extending upwardly from the outsole. Neither Cretinon nor Buccianti disclose a welt construction.

With respect to amended independent claim 8, Jayne, Cretinon and Buccianti, either alone or in combination, fail to disclose, teach or suggest: (1) a welt tucked at least partially behind an upwardly extending flange so that a terminating end of the welt is concealed from view; or (2) a welt that is fully visible in the forefoot region of the completed footwear construction.

Cretinon and Buccianti disclose sport shoes. They do not disclose a welt construction at all, let alone a welt construction that is visible in at least the forefoot region. As a result, they completely fail to teach or suggest a welt that is at least partially tucked behind an upwardly extending flange to conceal the terminating end of the welt from view. In addition, Jayne actually teaches away from the concept of an exposed welt by expressly teaching the use of an apron to conceal the welt and finish off the shoe. Like Cretinon and Buccianti, Jayne completely fails to suggest concealing the ends of a welt with a flange—because the entire welt of Jayne is already concealed.

Accordingly, Applicant therefore submits that the rejection of claim 8 under §103 is unfounded and/or overcome, and therefore should be withdrawn.

D. Obviousness Rejection Based on Jayne, Cretinon and Buccianti in View of Gilkerson

As originally filed, claims 9 and 10 were rejected under 35 U.S.C. §103 as being unpatentable over Jayne, Cretinon and Buccianti and further in view of Gilkerson.

Applicant : William J.B. Brown
Appl. No. : 10/725,647
Page No. : 11

As discussed above, Gilkerson is cited for disclosing a heel cradle. However, Applicant submits that Gilkerson does not supplement the above noted inadequacies of Jayne, Cretinon and Buccianti with respect to independent claim 8, from which claims 9 and 10 depend. In particular, Gilkerson fails to disclose, teach or suggest: (1) a welt tucked at least partially behind an upwardly extending flange so that a terminating end of the welt is concealed from view; or (2) a welt that is fully visible in the forefoot region in the completed footwear construction. Additionally, as mentioned above, Gilkerson fails to disclose a heel cradle that extends upwardly along at least a portion of the upper, as recited in claim 9. Gilkerson only discloses a flat frame that extends *around* a cushioned area of the heel.

Accordingly, Applicant therefore submits that the rejection of claims 9 and 10 under §103 is unfounded and/or overcome, and therefore should be withdrawn.

E. Dependent Claims

The dependent claims further define Applicant's invention and are therefore even more clearly allowable than the claims discussed above. For example, Claim 5 recites that the upper includes an arch region, and wherein the welt is stitched to the peripheral allowance substantially only in at least one of the forefoot region and the arch region. Claim 6 recites that the upper includes an arch region, and wherein the outsole includes an upwardly extending wall that traverses at least a portion of a width of the outsole in at least one of the forefoot region and the arch region.

Applicant : William J.B. Brown
Appl. No. : 10/725,647
Page No. : 12

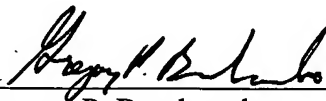
VI. Conclusion

In view of the personal interview, the above amendments, and these Remarks, Applicant respectfully submits that the present application is in condition for allowance. A notice to that effect is earnestly and respectfully requested.

Respectfully submitted,

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